



September 10, 2002

Ms. Ruth H. Soucy
Deputy General Counsel
Open Government Section
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2002-5060

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168377.

The Comptroller of Public Accounts (the “comptroller”) received a request for four categories of information regarding Earl Watters and Earl Watters Auto Brokers. You state that you have released some of the responsive information and that other requested information does not exist in the comptroller’s files.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered the comments submitted by the requestor and by the Texas Department of Transportation (the “department”). See Gov’t Code § 552.304 (providing for submission of public comments).

The department contends that this office should not reach the question of whether the requested information is confidential under chapter 730 of the Transportation Code and therefore excepted under section 552.101 of the Government Code because, under the Transportation Code, the department bears sole responsibility for processing all requests for motor vehicle records. We note, however, that under section 552.301 of the Government

¹The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dism’d); Open Records Decision No. 452 at 3 (1986).

Code, a governmental body that receives a request for information that it wishes to withhold from public disclosure must ask for a decision from this office, not from the department. Gov't Code § 552.301. Accordingly, the comptroller has asked this office to determine whether the submitted information may be withheld from disclosure. Therefore, we will address the submitted arguments against disclosure of the submitted information.

The comptroller argues that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code in conjunction with chapter 730 of the Transportation Code and states that the department will address the applicability of chapter 730 to the information at issue. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Section 730.004 of the Transportation Code provides:

Notwithstanding any other provisions of law to the contrary, including chapter 552, Government Code, except as provided by Sections 730.005 – 730.008, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Section 730.003 provides that, for purposes of chapter 730 of the Transportation Code:

(1) "Agency" includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency of this state, that compiles or maintains motor vehicle records.

...

(4) "Motor vehicle record" means a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include:

(A) a record that pertains to a motor carrier; or

(B) an accident report prepared under Chapter 550 or 601.

Transp. Code § 730.003(1), (4). Section 730.004 only applies to an "agency" that compiles or maintains motor vehicle records. *See* Transp. Code § 730.003(1). We do not believe that the comptroller compiles or maintains motor vehicle records and, therefore, section 730.004 does not apply to the comptroller. Accordingly, the requested information may not be withheld under section 552.101 in conjunction with section 730.004 of the Transportation

Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

The department nevertheless argues that section 730.013(a) prohibits the disclosure of all of the submitted information. Section 730.013(a) provides that “[a]n authorized recipient of personal information may not resell or redisclose the personal information in the identical or a substantially identical format the personal information was disclosed *to the recipient by the applicable agency.*” (Emphasis added.) The comptroller, however, does not indicate that it received the information at issue from the department. Further, even if portions of the submitted information had been obtained from the department and the comptroller were an “authorized recipient” of such information, the information at issue is sorted by sales tax date and consists largely of sales tax information. Therefore, it appears that such information is not in an identical or a substantially identical format to the format in which it was received by the department. Thus, we are unable to conclude that release of any of the submitted information is prohibited by section 730.013(a). *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

The department also argues that, under chapter 730 of the Transportation Code, the legislature has “conclusively and in unambiguous language” made all motor vehicle records absolutely excepted from disclosure under Public Information Act (the “Act”). We disagree. Instead, we find that chapter 730 provides circumstances under which an “agency” that compiles or maintains motor vehicle records must release, may release, or may not release motor vehicle records. As noted above, the comptroller is not such an “agency.” Accordingly, we find that chapter 730 of the Transportation Code does not apply to information held by the comptroller.

Nevertheless, the comptroller must withhold information excepted under section 552.130 of the Government Code. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, to the extent the license plate numbers, dealer plate numbers, and VIN numbers in the submitted documents were issued by an agency of the State of Texas, the comptroller must withhold such information, which we have marked, under section 552.130(a) of the Government Code. Any license plate numbers, dealer plate numbers, or VIN numbers issued by a state other than Texas may not be withheld under section 552.130 and must be released.

The department argues that all of the submitted information is derived from motor vehicle records and must therefore be withheld under section 552.130. However, as explained above, the remaining information consists largely of sales tax information. As such information does not appear to have been obtained from motor vehicle records, it may not be withheld under section 552.130.

To summarize, to the extent the marked license plate numbers, dealer plate numbers, and VIN numbers in the submitted documents were issued by an agency of the State of Texas, the comptroller must withhold such information under section 552.130. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 168377

Enc: Submitted documents

c: Ms. Karen Kay Kristopher
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(w/o enclosures)